

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HILLIARD WILSON,

Petitioner,

v.

THOMAS WINN,

Respondent,

Civil No. 2:15-CV-10383

HONORABLE NANCY G. EDMUNDS

UNITED STATES DISTRICT JUDGE

OPINION AND ORDER ACKNOWLEDGING RE-ASSIGNMENT OF CASE # 2:15-CV-10383 AS A COMPANION CASE TO CASE # 2:12-CV-14597, DIRECTING THE CLERK OF THE COURT TO RE-FILE THE PLEADINGS IN CASE # 2:15-CV-10383 UNDER CASE DOCKET # 2:12-14597, AND DISMISSING THE CURRENT PETITION AS DUPLICATIVE

Hilliard Wilson, ("Petitioner"), confined at the Saginaw Correctional Facility in Freeland, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his *pro se* application, petitioner challenges his convictions for assault with intent to commit murder, M.C.L.A. 750.83; discharging a firearm in an occupied structure, M.C.L.A. 750.234b(2); carrying a concealed weapon, M.C.L.A. 750.227; felon in possession of a firearm, M.C.L.A. 750.224f; and possession of a firearm in the commission of a felony, M.C.L.A. 750.227b.

Petitioner previously filed a petition for writ of habeas corpus, which challenged the same conviction and sentence. On February 5, 2013, this Court granted petitioner's motion to stay the habeas proceedings and hold the petition in abeyance while petitioner returned to the state courts to exhaust additional claims. See *Wilson v. Rapelje*, No. 2:12-CV-14597; 2013 WL 450087 (E.D. Mich. February 5, 2013).

On January 28, 2015, petitioner filed a petition for writ of habeas corpus, which was assigned the current case number and originally assigned to Judge Gershwin A. Drain. Petitioner seeks habeas relief from the convictions that he challenged in his previous habeas petition that was held in abeyance. The current application for writ of habeas corpus was re-assigned by Judge Drain to this Court on February 4, 2015 as a companion case to petitioner's previously filed habeas petition.

The Court will dismiss the current petition as duplicative of that petition. The Court will further order that the pleadings filed in this case be re-filed by the Clerk of the Court under Case Docket # 2:12-CV-14597.

The Court will dismiss Case # 2:15-CV-10383, because it is duplicative of Case # 2:12-CV-14597. A suit is duplicative, and thus subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. See *Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999)(internal citations omitted). Petitioner's current habeas petition is subject to dismissal as being duplicative of his first habeas petition, because both cases seek the same relief. *Id.* See also *Davis v. U.S. Parole Com'n*, 870 F. 2d 657 (Table), No. 1989 WL 25837, * 1 (6th Cir. March 7, 1989)(district court can properly dismiss a habeas petition as being duplicative of a pending habeas petition, where the district court finds that the instant petition is essentially the same as the earlier petition); *Marks v. Wolfenbarger*, No. 06-CV-14325; 2006 WL 2850340 (E.D. Mich. October 3, 2006)(same).

Accordingly, the Court **ORDERS** the Clerk of the Court to close Case # 2:15-CV-10383 and re-assign the case as a companion case to *Wilson v. Rapelje*, U.S.D.C. No. 2:12-14597.

IT IS FURTHER ORDERED that the Clerk of Court shall re-file in Case Docket # 2:12-14597, docket entry 1 from Case Docket # 2:15-10383.

s/ Nancy G. Edmunds

HON. NANCY G. EDMUNDS

UNITED STATES DISTRICT JUDGE

DATED: February 9, 2015

CERTIFICATION

I hereby certify that a copy of this Order was served upon counsel/parties of record on this 9th day of February, 2015 by electronic/regular mail.

s/ Carol J Bethel

Case Manager